petition on the ground that the debtor had on 13th April, 1972 paid them a sum of $1,500. The petition is based upon a bankruptcy notice and the amount of the debt alleged to be due to the petitioner is $4,229.60.

Section 6(7) of the Bankruptcy Act, 1967 enacts that a creditor's petition after it has been presented cannot be withdrawn without the leave of the court. It has become quite a frequent occurrence in this court that applications for leave to withdraw bankruptcy petitions are made as if leave was to be granted as a matter of course. It should, however, be understood that a petition once it has been presented deprives the petitioner of an unfettered control over it. The bankruptcy proceedings are for the administration of the estate of the debtor and not for the benefit of any particular creditor. The proceedings are for the benefit of the general body of creditors. Very often petitions are made not with the *bona fide* intention of getting the debtor's estate administered under the bankruptcy laws but for the collateral purpose of bringing pressure to bear upon the debtor. It is to check this abuse of the process of the court that section 6(7) of the Bankruptcy Act has been enacted. The court has, of course, a discretion in the matter of granting leave for the withdrawal of the petition. Each case has to be considered on its merits. In considering the application under section 6(7) of the Bankruptcy Act it is the duty of the court to see whether the interests of the general body of the creditors would be served or not by the grant of the application. The mere fact that the debtor has settled with the creditor is not enough for granting such leave. The creditor has no right to get his debtor adjudicated a bankrupt and pending such adjudication to receive from him the sum in adjustment of his claim as he is not entitled to use the petition as a lever to secure preferential treatment for himself.

There is no evidence before me in this case that the debtor has no other creditors. He alone could furnish this information. He has already committed an act of bankruptcy and is not in court. If he can pay all his creditors he should have no difficulty to get a discharge. In the circumstances I am not readily disposed to grant leave to the withdrawal of the petition. The application is refused and a receiving and adjudication order made against the debtor.

Application refused.

Solicitors: *Yeap & Yeap.*

V. SP. SUPPIAH CHETTIAR v. K. S. NAVARADNAM

[A.C.J. (Sharma J.) May 10, 1972]

[Ipoh — Civil Appeal No. 7 of 1972]

Moneylenders — Promissory notes stamped after execution — Whether admissible in evidence.

Stamps — Stamping promissory notes 'immediately' or 'forthwith' after execution — Meaning of — Stamp Ordinance, 1949, ss. 2, 41 and 52.

Evidence — Documents — Admissibility of promissory notes stamped after execution.

The appellant/plaintiff brought an action in the sessions court claiming a sum of $2,492.20 on three promissory notes executed by the respondent/defendant on various dates. An objection was taken by defendant's counsel, under section 52 read with section 41 of the Stamp Ordinance, to the admissibility of the three promissory notes on the ground that they were not stamped "before or at the time of" their execution by the defendant. The plaintiff admitted that the three promissory notes were stamped not before but after their execution and on the very same day of their execution.

The learned president held the promissory notes inadmissible and dismissed the plaintiff's claim with costs.

The plaintiff appealed.

The question in this case was whether the act of stamping by the appellant was substantially one transaction with the act of execution by the respondent.

Held, allowing the appeal: (1) there was sufficient compliance by the appellant with section 41 of the Stamp Ordinance. The execution and the stamping cannot but be regarded as one transaction;

(2) therefore, the order of the learned president must be set aside and judgment entered for the appellant in the sum of $2,492.20 with interest at 6% from the date of the filing of the action to the date of realisation and costs.

Cases referred to:-

(1) *R.* v. *The Justices of Berkshire* (1878) 4 Q.B.D. 469, 471.
(2) *Thompson* v. *Gibson* 151 E.R. 1045, 1047.
(3) *Barker* v. *Lewis & Peat* (1913) 82 L.J. 843, 845.
(4) *Page* v. *Pearce* 151 E.R. 1211.
(5) *Ex parte Lamb, In re Southam* (1881) 19 Ch. D. 169, 173.
(6) *Re Muscovitch and Muscovitch, Ex parte Muscovitch and Muscovitch, Bankrupts* v. *Official Receiver* [1939] 1 All E.R. 135.
(7) *Scott* v. *Scott* [1921] P. 107 at p. 124.
(8) *R.* v. *Arkwright* (1849) 18 L.J.Q.B. 26 at p. 28.
(9) *Chapman* v. *Robinson* (1859) 28 L.J. Mag. Cases 30.
(10) *Ex parte Rolph, In re Spindler* [1881] W.N. 136.
(11) *Re Tunnel Mining Company, Pool's Case* (1887) 35 Ch. D. 579, 581.
(12) *Surij Mull* v. *Hudson* (1901) I.L.R. 24 Mad. 259, 261.
(13) *M. Takim & Co.* v. *Fazal Kassam Velji* [1955] A.C. 617.

MAGISTRATE'S CIVIL APPEAL

N. H. Chan for the appellant.

S. Theivanthiran for the respondent.

Sharma J. (delivering oral judgment): The plaintiff filed an action in the sessions court claiming a sum of $2,492.20 on three promissory notes executed by the defendant on 4th December, 1969, 4th August. 1970 and 24th August, 1970 respectively. The defence to the plaintiff's claim was the usual defence one finds in any money-lender's action. In the course of the cross-examination of the plaintiff an objection was taken by

the learned counsel for the defendant (under section 52 read with section 41 of the Stamp Ordinance) to the admissibility of the three promissory notes on the ground that they were not stamped "before or at the time of" their execution by the defendant. The plaintiff admitted that the three promissory notes were stamped not before but after their execution. He, however, added that they were stamped on the very day of their execution. The learned president agreed with the submissions of the learned counsel for the defendant, held the promissory notes inadmissible and dismissed the plaintiff's claim with costs. The plaintiff now appeals against the decision of the learned president.

Section 2 of the Stamp Ordinance, 1949 defines the expressions "duly stamped" and "executed" appearing in the Ordinance. The meaning given to those definitions is to be so read and interpreted "unless the context otherwise requires." The opening words of section 2 do qualify the meaning of the words defined therein wherever the context so requires or warrants.

Section 41 of the Stamp Ordinance reads:

"41. Save where express provision to the contrary is in this Ordinance contained, all instruments chargeable with duty and executed by any person in the Federation shall be stamped before or at the time of execution."

"Execution" means "signature" under section 2 of the Ordinance. Section 47 of the Stamp Ordinance deals with stamping of instruments after execution but a promissory note is one of the instruments which has been expressly excluded from the purview of that section. Next we come to section 52 which reads:

"52. No instrument chargeable with duty shall be admitted in evidence for any purpose ... or shall be acted upon, ... unless such instrument is duly stamped."

It should be observed that the words "duly stamped" appear in section 52 while in section 41 only the word "stamped" appears. In fact the whole of Part VII of the Ordinance deals with "Instruments Not Duly Stamped". The definition of "duly stamped" embraces not only the idea of a stamp "of not less than the proper amount" being affixed to the instrument but also the way in which the stamp has been used (see section 7 of the Ordinance).

In the course of the arguments, I asked the learned counsel for the respondent whether the requirements of law would be duly fulfilled if the act of stamping was done *immediately* after the execution of the promissory notes. The view of the learned counsel for the respondent seems to be that the only way a promissory note can be lawfully executed in order to entitle it to be admitted in evidence is when it is stamped before execution and that even if it is stamped forthwith or immediately after execution it can neither be admitted in evidence nor acted upon by a court. I respectfully disagree with the view entertained by the learned counsel as the effect of it would be to score out the words "or at the time" expressly provided by the legislature in section 41. It is the duty of the court to give effect to every word used in an Act unless it makes the enactment absurd or senseless.

The word "immediately" has been held to mean "allowing a reasonable time for doing it." I need not go into the various authorities interpreting the word "immediately" or "forthwith" but reference may be made to in *R.* v. *The Justices of Berkshire*,[1] in *Thompson* v. *Gibson*,[2] in *Barker* v. *Lewis & Peat*[3] and in *Page* v. *Pearce*.[4]

Maxwell on Interpretation of Statutes (Eleventh Edition) at page 341 says:

"When a statute requires that something shall be done 'forthwith' or 'immediately' or even 'instantly' it would probably be understood as allowing a reasonable time for doing it."

In *Ex parte Lamb, In re Southam*[5] Lush, L.J. observed:

"The word 'forthwith' has not a fixed and absolute meaning; it must be construed with reference to the objects of the rule and the circumstances of the case. In the present case the appellants had not to wait to do the act till some one asked them to do it; it was simply their duty to do it. The entry of the appeal in London and the giving notice to the Registrar in the country were one continuous act which was to be done within a reasonable time."

Also see *Re Muscovitch and Muscovitch, Ex parte Muscovitch and Muscovitch, Bankrupts* v *Official Receiver*.[6]

What is a "reasonable time" is not always an easy thing to determine —

"What is a reasonable time must be decided not by any resort to a judicial discretion, but having regard to all the circumstances of the particular case, and it becomes a matter of law as to what circumstances would justify the judge in coming to the conclusion that the time is reasonable." (See *Scott* v. *Scott*[7]).

In *R.* v. *Arkwright*[8] Lord Denman, C.J. delivering judgment said:

"The words 'on or upon,' it has been decided, may either mean before the act done to which it relates, or simultaneously with the act done, or after the act done, according as reason and good sense require with reference to the context and the subject-matter of the enactment — *R.* v. *Humphrey* 10 Ad. & E. 335; 113 E.R. 128. They cannot here mean 'simultaneously with,' for the notice is manifold and continued for many days; and if it means 'before,' all the inconvenient consequences will follow which we have already pointed out. We must, therefore, construe it as synonymous with 'after' that is, the order must be made after notice given."

The words "at the time of the application" appearing in section 3 of the Summary Jurisdiction Act, 1857 were considered in *Chapman* v. *Robinson*[9] and it was held that the recognizance could be entered into *at any time* during the three days allowed for the application and need not be entered into *simultaneously* with the making of the application.

In *Ex parte Rolph; In re Spindler*[10] a bill of sale of chattels was expressed to be made "in consideration of a certain amount paid *at or before* its execution." Jessel, M.R., held that the word "at" had a somewhat elastic meaning.

I may now next refer to *In re Tunnel Mining Company Pool's* case[11] where North, J., observed:

"I may put a case for example: supposing parties had met for the purpose of carrying out a contract for the issue of paid-up shares, and had postponed the actual issue for half-an-hour to enable them to send a person to get the contract registered in the meanwhile; and supposing other business to have been done in the meantime, and precisely at the

end of half an hour the shares to have been issued; if, instead of getting the contract registered within the half-hour the messenger had been detained for an hour, or had loitered on the way, and the contract was not registered till half-an-hour after the actual issue of the certificate — it seems to me that would have been immaterial; and the contract would have been considered registered at the time of the issue. If, in point of fact, in this case Pool had gone straight off to the public office and registered the agreement on the same day, so that the registration had appeared to be on that day, I do not think any one would have raised a question. It would have been substantially one transaction, and whether the certificate were handed over before or after the registration would have been immaterial."

The real question in this case is whether the act of stamping by the plaintiff was substantially one transaction with the act of execution by the defendant. There is no evidence to the contrary as all the three promissory notes were stamped on the very day of their execution. Section 41 of our Stamp Ordinance is *in pari materia* with section 16 of the Indian Stamp Act, 1879 (later repealed by the Stamp Act 1899). The same question arose as early as 1900 in the case of *Surij Mull* v. *Hudson*[12] and the Division Bench of the Madras High Court consisting of Subrahmania Ayyar and Davies, JJ. said:

"We must also disagree with the judge's decision that the promissory note sued upon was inadmissible in evidence on the ground that the stamp was affixed and cancelled after the signature to the note was made. The uncontradicted evidence of the plaintiff shows that the acts were practically simultaneous, and the stamping therefore was done 'at the time of execution' within the meaning of section 16 of the Stamp Act, (I of 1879), which is the Act governing the present case. Even under the present Act, (II of 1899), where 'execution' is defined as meaning 'signature', we do not think it would make any difference if the stamp is affixed and cancelled immediately after the signature, the signing and the stamping being continuous acts in the same transaction."

This view of the Madras High Court has now been fortified and confirmed by the Privy Council in the case of *M. Takim & Co.* v. *Fazal Kassam Velji*[13] which was a case under the Zanzibar Stamp Decree, 1940. Section 19 of the Zanzibar Stamp Decree reads:

"All instruments chargeable with duty and executed by any person in the Protectorate shall be stamped within thirty days of execution:

Provided that any instrument chargeable with duty of ten cents, or twenty cents or promissory notes and bills of exchange shall be stamped at or before the time of execution, or the date of the instrument whichever shall be the earlier."

Lord Somervell in delivering the judgment of the Privy Council said at page 626:

"The provision as to the meaning of execution is 'unless the context otherwise requires.' The word 'at' in the phrase 'at or before' in the proviso to section 19 cannot mean simultaneously with signing, and must therefore cover a reasonable time after signing."

It has been suggested to me this judgment of the Privy Council is not the last word as their Lordships have themselves indicated in the judgment that they would consider the question afresh when the occasion arose. The view of the Privy Council expressed in this case is binding on me and in my opinion on all the courts in this country. The authority is binding on me until such time as the Privy Council decides otherwise. As far as I am concerned it is conclusive for the purpose of the determination of this appeal. There was sufficient compliance with section 41 of the Stamp Ordinance by the plaintiff and as already indicated by me the execution and the stamping cannot but be regarded as one transaction.

The defendant was put to his election by the learned president and he chose not to lead any evidence and decided to stand by his election.

The appeal is allowed. The order of the learned president is set aside. There will be judgment for the appellant in the sum of $2,492.20 with interest at 6 *per cent* as from the date of the filing of the action to the date of realisation. The appellant will also have the costs here and in the court below.

Appeal allowed.

Solicitors: *Chor Pee & Hin Hiong; Gibb & Co.*

GUTHRIE WAUGH BHD. v. MALAIAPPAN MUTHUCHUMARU

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.) May 11, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 126 of 1971]

Contract — Deed of arrangement — Consideration for — Whether necessary to support promise by way of a deed of arrangement.

Practice and Procedure — Appeal — Interference by appellate court with finding of fact of lower court.

This was an appeal against the decision of the High Court ([1972] 1 M.L.J. 35).

The issue before the High Court was purely a question of fact, that is, whether there was any consideration for the deed of arrangement to support the respondent's promise. The same issue fell to be determined by the Federal Court.

Held, allowing the appeal: (1) the material facts were wholly overlooked. The estates were never the appellants' customers but were the respondent's own, and they settled accounts at all times with him. They never held the respondent out as their agent;

(2) whereas the respondent paid for the goods, of which he had taken delivery with his own personal cheques, there was no evidence at all that he did so otherwise than as the appellants' customer. The appellants could not have sued any of the estates for any quantity of the goods sold and delivered because there was no proof of delivery to anybody but the respondent. Thus, once the evidence established that the respondent was a customer of the appellants, there was no need to explore the law as to consideration for a contract. Therefore, judgment must be entered for the appellants in the amount claimed, with interest and costs.

Cases referred to:-

(1) *Attorney-General for Ceylon* v. *A. D. Silva* [1953] A.C. 461, 479.

(2) *Sneade v. Wotherton Barytes and Lead Mining Co.* [1904] 1 K.B. 295, 297.

(3) *Barker* v. *Furlong* [1891] 2 Ch. 172, 184.

FEDERAL COURT.

M. Shankar for the appellants.

N. Ramachandran for the respondent.

Ong C.J. (Malaya): The judgment herein appealed against was reported recently in the *Malayan Law Journal* ([1972] 1 M.L.J. 35); otherwise there should have been no need for this written judgment. The simple issue before the High Court was purely a